

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**Shirley Lindsay,**

Plaintiff,

v.

**Carolyn K. Mulne**, in individual  
and representative capacity as  
trustee;  
**Jeff Muchamel**; and Does 1-10,  
Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Shirley Lindsay complains of Carolyn K. Mulne, in individual and representative capacity as trustee; Jeff Muchamel; and Does 1-10 ("Defendants"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. She suffers from spinal muscular atrophy. Plaintiff drives a van that has a handicap placard issued by the state of California. She uses both a walker and wheelchair for mobility.

1       2. Defendant Carolyn K. Mulne, in individual and representative capacity  
2 as trustee, owned the real property located at or about 11653 Moorpak Street,  
3 North Hollywood, California, in January 2019.

4       3. Defendant Carolyn K. Mulne, in individual and representative capacity  
5 as trustee, owns the real property located at or about 11653 Moorpak Street,  
6 North Hollywood, California, currently.

7       4. Defendant Jeff Muchamel owned Village Market located at or about  
8 11653 Moorpak Street, North Hollywood, California, in January 2019.

9       5. Defendant Jeff Muchamel owns Village Market ("Market") located at or  
10 about 11653 Moorpak Street, North Hollywood, California, currently.

11       6. Plaintiff does not know the true names of Defendants, their business  
12 capacities, their ownership connection to the property and business, or their  
13 relative responsibilities in causing the access violations herein complained of,  
14 and alleges a joint venture and common enterprise by all such Defendants.  
15 Plaintiff is informed and believes that each of the Defendants herein,  
16 including Does 1 through 10, inclusive, is responsible in some capacity for the  
17 events herein alleged, or is a necessary party for obtaining appropriate relief.  
18 Plaintiff will seek leave to amend when the true names, capacities,  
19 connections, and responsibilities of the Defendants and Does 1 through 10,  
20 inclusive, are ascertained.

21  
22       **JURISDICTION & VENUE:**

23       7. The Court has subject matter jurisdiction over the action pursuant to 28  
24 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
25 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

26       8. Pursuant to supplemental jurisdiction, an attendant and related cause  
27 of action, arising from the same nucleus of operative facts and arising out of  
28 the same transactions, is also brought under California's Unruh Civil Rights

1 Act, which act expressly incorporates the Americans with Disabilities Act.

2 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
3 founded on the fact that the real property which is the subject of this action is  
4 located in this district and that Plaintiff's cause of action arose in this district.

5  
6 **FACTUAL ALLEGATIONS:**

7 10. Plaintiff went to the Market in January 2019 with the intention to avail  
8 herself of its goods and services, motivated in part to determine if the  
9 defendants comply with the disability access laws.

10 11. The Market is a facility open to the public, a place of public  
11 accommodation, and a business establishment.

12 12. Paths of travel are one of the facilities, privileges, and advantages  
13 offered by Defendants to patrons of the Market.

14 13. Some wheelchair users, including plaintiff, travel onto the site from the  
15 exterior public sidewalks. Here, there was no safe wheelchair accessible route  
16 of travel from the northern sidewalk on Moorpark Street to the accessible  
17 entrance of the Market. The public sidewalks terminate after entering the  
18 boundary of the property and there is no safe path of travel after that point.

19 14. There was a ramp leading from the sidewalk to the front entrance of the  
20 Market, which was longer than six feet in length. The ramp had slopes of about  
21 9.4%. There were no handrails. This is inaccessible to wheelchair users.

22 15. Parking spaces are another one of the facilities, privileges, and  
23 advantages offered by Defendants to patrons of the Market.

24 16. Unfortunately, even though there was a parking space marked and  
25 reserved for persons with disabilities in the parking lot serving the Market  
26 during Plaintiff's visit, the parking stall and access aisle were not level with  
27 each other. The parking stall and access aisle had inaccessible slopes that  
28 exceeded 2.1%.

1 17. Additionally, the flared sides of the ramp that is located in the access  
2 aisle has cross slopes that are about 17%. This is too steep.

3 18. Finally, the parking stall ostensibly designed for persons with  
4 disabilities did not have the required signage bearing the ISA logo, there was  
5 no "Minimum Fine \$250" signage and there was no tow-away signage.

6 19. Currently, the parking stall and access aisle are not level with each other.

7 20. Currently, the parking stall ostensibly designed for persons with  
8 disabilities does not have the required signage bearing the ISA logo, there is no  
9 "Minimum Fine \$250" and there is no tow-away signage.

10 21. Plaintiff personally encountered these barriers.

11 22. This inaccessible facility denied the plaintiff full and equal access and  
12 caused her difficulty.

13 23. Meanwhile, even though the plaintiff did not personally confront the  
14 barriers, the walkway in front of the Market has cross slopes on the walkways  
15 that are above 2.1%.

16 24. Although there are shelves and merchandise aisles open to customers  
17 for shopping, the paths of travel in and throughout these merchandise aisles  
18 are not accessible because the defendants have a practice of placing  
19 merchandise boxes and displays in the route of travel, which restricts passage  
20 to less than 36 inches in width.

21 25. In fact, some of the aisles narrows to as little as 32 inches in width.

22 26. Defendants have failed to maintain in operable working condition those  
23 features of facilities and equipment that are required to be readily accessible to  
24 and usable by persons with disabilities at the Subject Property.

25 27. Plaintiff will return to the Market to avail herself of its goods or services  
26 once the barriers are permanently removed. If the barriers are not removed,  
27 the plaintiff will face unlawful and discriminatory barriers again.

28 28. The defendants have failed to maintain in working and useable

1 conditions those features required to provide ready access to persons with  
2 disabilities.

3 29. The barriers identified above are easily removed without much  
4 difficulty or expense. They are the types of barriers identified by the  
5 Department of Justice as presumably readily achievable to remove and, in fact,  
6 these barriers are readily achievable to remove.

7 30. For example, there are numerous paint/stripe companies that will come  
8 and stripe a level parking stall and access aisle and install proper signage on  
9 rapid notice, with very modest expense, sometimes as low as \$300 in full  
10 compliance with federal and state access standards.

11 31. Given the obvious and blatant nature of the barriers and violations  
12 alleged herein, the plaintiff alleges, on information and belief, that there are  
13 other violations and barriers on the site that relate to her disability. Plaintiff  
14 will amend the complaint, to provide proper notice regarding the scope of this  
15 lawsuit, once she conducts a site inspection. However, please be on notice that  
16 the plaintiff seeks to have all barriers related to her disability remedied. See  
17 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
18 encounters one barrier at a site, she can sue to have all barriers that relate to  
19 her disability removed regardless of whether she personally encountered  
20 them).

21  
22 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
23 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
24 Defendants.) (42 U.S.C. section 12101, et seq.)

25 32. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
26 again herein, the allegations contained in all prior paragraphs of this  
27 complaint.

28 33. Under the ADA, it is an act of discrimination to fail to ensure that the

1 privileges, advantages, accommodations, facilities, goods and services of any  
 2 place of public accommodation is offered on a full and equal basis by anyone  
 3 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 4 § 12182(a). Discrimination is defined, inter alia, as follows:

- 5 a. A failure to make reasonable modifications in policies, practices,  
 6 or procedures, when such modifications are necessary to afford  
 7 goods, services, facilities, privileges, advantages, or  
 8 accommodations to individuals with disabilities, unless the  
 9 accommodation would work a fundamental alteration of those  
 10 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 11 b. A failure to remove architectural barriers where such removal is  
 12 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
 13 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,  
 14 Appendix “D.”
- 15 c. A failure to make alterations in such a manner that, to the  
 16 maximum extent feasible, the altered portions of the facility are  
 17 readily accessible to and usable by individuals with disabilities,  
 18 including individuals who use wheelchairs or to ensure that, to the  
 19 maximum extent feasible, the path of travel to the altered area and  
 20 the bathrooms, telephones, and drinking fountains serving the  
 21 altered area, are readily accessible to and usable by individuals  
 22 with disabilities. 42 U.S.C. § 12183(a)(2).

23 34. Under the ADA, there must be an accessible route of travel from the  
 24 boundary of the site, i.e., from the public street and public sidewalks at the “site  
 25 arrival points” to the building entrances on the site. 2010 Standards (ADAAS)  
 26 § 206.2.1.

27 35. Here, the failure to provide an accessible route is a violation of the law.

28 36. If a ramp run has a rise greater than 6 inches or a horizontal projection

1 greater than 6 feet, then it must have handrails on both sides. 2010 Standards  
2 § 405.8.

3 37. Here, the failure to provide handrails on the ramp leading to the front  
4 entrance is a violation of the ADA.

5 38. Under the 2010 Standards, access aisles shall be at the same level as the  
6 parking spaces they serve. Changes in level are not permitted. 2010 Standards  
7 502.4. "Access aisle are required to be nearly level in all directions to provide  
8 a surface for wheelchair transfer to and from vehicles." 2010 Standards §  
9 502.4 Advisory. No more than a 1:48 slope is permitted. 2010 Standards §  
10 502.4.

11 39. Here, the failure to provide level parking stall is a violation of the law.

12 40. The sides of curb ramp flares shall not be steeper than 10%. 2010  
13 Standards § 406.3.

14 41. Here, the sides of the curb ramp flares exceed that allowed by law.

15 42. Any business that provides parking spaces must provide accessible  
16 parking spaces. 2010 Standards § 208. To qualify as a reserved handicap  
17 parking space, the space must be properly marked and designated. Under the  
18 ADA, the method, color of marking, and length of the parking space are to be  
19 addressed by State or local laws or regulations. See 36 C.F.R., Part 1191, §  
20 502.3.3. Under the California Building Code, to properly and effectively  
21 reserve a parking space for persons with disabilities, each parking space must  
22 be at least 216 inches in length. CBC § 11B-502.2 Under the California  
23 Building Code, to properly and effectively reserve a parking space for persons  
24 with disabilities, each such space must be identified with a reflectorized sign  
25 permanently posted adjacent to and visible from each stall or space. CBC §  
26 1129B.4. The sign must consist of the International Symbol of Accessibility  
27 (♿) in white on a blue background. Id. It cannot be smaller than 70 square  
28 inches and must be mounted so that there is a minimum of 80 inches from the



1 bottom of the sign to the parking space. Id. Signs must be posted so that they  
2 cannot be obscured by a vehicle parking in the space. Id. An additional sign or  
3 additional language below the symbol of accessibility must state, “Minimum  
4 Fine \$250” to ensure that the space remains available for persons with  
5 disabilities. Id. Another sign must be posted in a conspicuous place at the  
6 entrance to the parking lot or immediately adjacent to each handicap parking  
7 space, with lettering 1 inch in height, that clearly and conspicuously warn that  
8 unauthorized vehicles parking in the handicap parking spaces can be towed at  
9 the owner’s expense. Id. Additionally, the surface of the handicap parking stall  
10 must have a profile view of a wheelchair occupant (♿) that is 36 inches by 36  
11 inches. Id. And the surface of the access aisle must have a blue border. CBC §  
12 1129B.3. The words “NO PARKING” in letters at least a foot high must be  
13 painted on the access aisle. Id.

14 43. Here, there was no pole or wall mounted signage with the wheelchair  
15 logo, no “Minimum Fine \$250” and no tow-away signs, in violation of the  
16 ADA.

17 44. Nowhere shall the cross slope of an accessible route exceed 2.1%. 2010  
18 Standards § 403.3.

19 45. Here, the slopes along the walkways exceeded the levels allowed by law.

20 46. The minimum clear width of an accessible route shall be 36 inches.  
21 2010 Standards § 403.5.1.

22 47. Here, the failure to provide accessible paths of travel inside the Market  
23 is a violation of the ADA.

24 48. A public accommodation must maintain in operable working condition  
25 those features of its facilities and equipment that are required to be readily  
26 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

27 49. Here, the failure to ensure that the accessible facilities were available  
28 and ready to be used by the plaintiff is a violation of the law.



1        50. Given its location and options, plaintiff will continue to desire to  
2 patronize the Market but she has been and will continue to be discriminated  
3 against due to the lack of accessible facilities and, therefore, seeks injunctive  
4 relief to remove the barriers.

5  
6        **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
7 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
8 Code § 51-53.)

9        51. Plaintiff repleads and incorporates by reference, as if fully set forth  
10 again herein, the allegations contained in all prior paragraphs of this  
11 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
12 that persons with disabilities are entitled to full and equal accommodations,  
13 advantages, facilities, privileges, or services in all business establishment of  
14 every kind whatsoever within the jurisdiction of the State of California. Cal.  
15 Civ. Code §51(b).

16        52. The Unruh Act provides that a violation of the ADA is a violation of the  
17 Unruh Act. Cal. Civ. Code, § 51(f).

18        53. Defendants’ acts and omissions, as herein alleged, have violated the  
19 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
20 rights to full and equal use of the accommodations, advantages, facilities,  
21 privileges, or services offered.

22        54. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
23 discomfort or embarrassment for the plaintiff, the defendants are also each  
24 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
25 (c).)

1           **PRAYER:**

2           Wherefore, Plaintiff prays that this Court award damages and provide  
3 relief as follows:

4           1. For injunctive relief, compelling Defendants to comply with the  
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
6 plaintiff is not invoking section 55 of the California Civil Code and is not  
7 seeking injunctive relief under the Disabled Persons Act at all.

8           2. Damages under the Unruh Civil Rights Act, which provides for actual  
9 damages and a statutory minimum of \$4,000 per occasion.

10           3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

12  
13 Dated: February 11, 2019

CENTER FOR DISABILITY ACCESS

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15  
16 By:



17 \_\_\_\_\_  
18 Chris Carson, Esq.  
19 Attorney for plaintiff  
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